IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 650 of 2004

For Approval and Signature:

HON'BLE MR. JUSTICE M.D. SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

PRAKASH SURENDRABHAI VYAS

Versus

STATE OF GUJARAT

Appearance:

1. Criminal Revision Application No. 650 of 2004

MR HR PRAJAPATI for Petitioner No. 1

Mr.K.P.Raval for Respondent No. 1

DS AFF.NOT FILED (N) for Respondent No. 2

CORAM : HON'BLE MR. JUSTICE M.D. SHAH

Date of decision: 04/05/2005

C.A.V. JUDGEMENT

Heard learned Advocate Mr. H.R.Prajapati for the

petitioner and Mr. K.P.Raval for the respondent no.1-State.

1. Rule. Mr.K.P.Raval, learned A.P.P. waives service of rule on behalf of the respondent-State. The respondent no.2 though duly served has neither remained present nor filed any affidavit. With the consent of the learned Advocates appearing for the parties, the matter is taken up for final hearing and disposal today.

2. This Criminal Revision Application filed under Section 397 read with Section 401 of the Criminal Procedure Code, 1973 is directed against the order dated 5-5-2003/30-4-2003 passed by the District Collector, Bharuch in ECA/ENFO/Case no.47/2002 ordering 100% confiscation of the stock i.e. 12 KL white kerosene valued at Rs.1,92,000/- as well as the tanker valued at Rs.5,00,000/- which was confirmed in appeal vide order dated 18-6-2004 by the Jt. District Judge and Additional Sessions Judge, Fast Track Court no.4, Bharuch, while rejecting Criminal Appeal no.40/2003 filed by the applicant.

3. Briefly stated, the facts leading to the institution of the present Criminal Revision Application are that the applicant was managing the affairs of a tanker entrusted to him by his brother who had migrated to USA and is residing there since last many years. It is alleged by the applicant that the said tanker is being run by one Sureshbhai. On 1-7-2002, the said tanker was spotted by the Mamlatdar, Ankleshwar, in a suspicious condition outside the gate of Ganga Rasayan Pvt.Ltd, G.I.D.C. Ankleshwar. On inspection, it was found that 12 KL of white kerosene was loaded in the tanker and that the driver was not present at the spot, but on demanding the requisite invoice and other documents from the cleaner who was present, no material whatsoever could be produced by him as a result of which, the tanker was seized alongwith the white kerosene loaded therein vide seizure order dated 1-7-2002. According to the applicant, the inspecting officers had drawn samples of the material seized, statement of the petitioner was recorded on 2-7-2002 and a further statement of the petitioner as well as the tanker driver were also recorded by the inspecting officers. It is the case of the applicant that a written reply dated 17-7-2002 as also an invoice no.90 dated 24-6-2002 issued by Petro India Sales Corporation in favour of Ganga Rasayan Pvt.Ltd., Ankleshwar were also submitted to the inspecting officers by the tanker driver in pursuance whereof further investigation was carried out and on

completion of the investigation, the applicant was ordered to be detained by order dated 14-10-2002 passed by the respondent no.2 under the Prevention of Black Marketing and Maintenance of Supplies of Essential Commodities Act, 1980. Thereafter, the applicant made representation to the Central Government and by order dated 13-3-2003, the detention order was revoked. Subsequent thereto, the respondent no.2-District Collector, Bharuch, issued a show cause notice to the applicant calling upon him to show cause as to why the seized goods should not be confiscated under the provisions of the Essential Commodities Act on the ground that at the time of inspection, the cleaner had not produced purchase bill, invoice or delivery challan and that the documents having been produced after 12 days, the transaction is bogus. It is also the case of the applicant that the applicant was not aware about the dates fixed for hearing in respect of the show cause notices dated 11-3-2003 and that in fact the applicant had not been served the show cause notice dated 21-3-2003. Ultimately the respondent no.2-District Collector, Bharuch, by his order dated 30-4-2003 Collector, Bharuch, directed confiscation of 100% of the material seized alongwith the tanker in which the materials were loaded. Thereupon, the applicant preferred Criminal Appeal no.40 of 2003 before the learned Joint District Judge and Additional Sessions Judge, Fast Track Court no.4, Bharuch, which came to be rejected by order dated 18-6-2004 while confirming the order passed by the District Collector, Bharuch, dated 30-4-2003, giving rise to the present Criminal Revision Application.

4. Learned Counsel Mr. Prajapati for the petitioner while taking me through the show cause notice dated 21-3-2003 issued by the respondent no.2 submitted that the order of confiscation dated 30-4-2003 passed by the respondent no.2 is bad in law inasmuch as the authority while issuing the show cause notice under the Essential Commodities Act has stated that the petitioner has committed breach of Clause 3 (1) and (2) of the Solvent Control Order, 2000 while in the order of confiscation the authority has stated that the applicant has committed breach of the provisions of Gujarat Essential Articles (Dealers Regulation) Order, 1977 and Kerosene (Restriction on Use and Fixation of Ceiling Price) Order, 1993. This submission in my opinion does not merit acceptance in view of the fact that both these orders have been framed by the legislature in exercise of powers conferred by Section 3 of the Essential Commodities Act,1955.

5. The learned Counsel next submitted that the order of confiscation is passed in violation of principles of natural justice as the show cause notice does not reveal the materials which had weighed with the authority while passing the order of confiscation nor has the copies of such documents been supplied to the applicant. According to the learned Counsel, the show cause notice merely states that the purchase bill has been produced after 12 days from the date of investigation which has caused grave suspicion with regard to its genuineness. It has also been submitted by the applicant that various documents, namely, statements of the applicant himself, cleaner, tanker driver, Manager of Ganga Rasayan Pvt.Ltd, report of Supply Inspector and other papers of investigation with regard to invoices were not disclosed or supplied to the applicant. To substantiate his say, Mr. Prajapati has relied on the decision rendered in the case of (1) RAMBHAI ALIAS RAMLO KHIMCHAND v. STATE OF GUJARAT AND ANOTHER reported in 1990(2) G.L.H.625 and (2) KIRAN OIL INDUSTRIES V. DISTRICT COLLECTOR, JAMNAGAR reported in 1996(2) G.L.R. 127. I am in respectful agreement with the ratio laid down by these two decisions, but looking to the facts of the present case, it is amply clear that in the show cause notice issued to the applicant it is specifically mentioned that at the time of inspection, the cleaner had not produced the purchase bill, invoice or delivery challan, but they were produced only after 12 days and that the said transaction was bogus. It is pertinent to note that even after the issuance of the show cause notice sufficient opportunity was afforded to the applicant and other persons to offer their explanation, but the applicant has chosen to remain absent and therefore, it cannot be said that due to want of material documents the applicant could not represent his case properly, and that the authority has violated the principles of natural justice. In that view of the matter, these two authorities will not be of any assistance to the learned Counsel for the applicant.

6. The learned Counsel next contended that the confiscating authority must be satisfied of objective facts and beyond any reasonable doubt that the stock of kerosene found from the tanker was meant for illegal purpose or it was meant for unauthorised disposal in violatioon of the object and purpose of the Act. It has also been submitted by the learned Counsel that the entire case is based on circumstantial evidence, and therefore, each circumstance is a relevant factor and a continuous chain must be established so as to prove the guilt of the applicant. In support of these submissions,

the learned Counsel drew my attention to the decision rendered in the case of (1) DEVIKADEVI WIFE OF PREMJIBHAI RUPAREL V. STATE OF GUJARAT AND ANR. reported in 1983 (1) GLR 215 wherein at paragraph 13 and 19 of the judgment it has been held as under:

"13. Once it is held that the control order does not apply to the petitioner how is a dealer outside Gujarat State, it is obvious that cement bags in question which were found stored at R and P awaiting their onward transport to Bombay which was the place of their destination, could not have been confiscated legally and validly by the Collector unless it was shown to the hilt that these cement bags were stored by the petitioner who was an outsider purchaser with a view to ultimately selling them in Gujarat markets. It is obvious that the confiscating authority has to be satisfied on objective facts and beyond any shadow of reasonable doubt that these goods were stored with that end in view. If on the contrary the evidence falls short of such a finding , however, suspicious the conduct of the concerned stockist may be, the benefit of doubt must go to him, and not to the confiscating authority. It must be realised that the order of confiscation which can be passed under Sec.6A of the Act is a very drastic order having grave consequences affecting fundamental rights of the citizen to acquire, hold and dispose of their properties."

"19 It is now well settled that in case of circumstantial evidence, the legal chain which can be forged by diverse links of such evidence should be complete that it is incompatible with the innocence of the concerned accused. It cannot be said that the said goods stored in local godowns at P and R was incompatible with the petitioner's case that they were stored awaiting their transport to Bombay and that it leads to but only one conclusion about involvement of the petition in the contravention of the order beyond any shadow of doubt."

6.1. The learned Counsel has also drawn my attention to the decision rendered in the case of STATE OF GUJARAT v. DEVIKA DEVI (SMT) AND ANR. reported in (1996) 7 SCC 109 to point out that the decision in 1983 (1) GLR 215 referred to above has been confirmed by the Supreme Court.

6.2.. Now, in the instant case, it is an admitted position that on the day of inspection of the truck by the Mamlatdar, the truck driver was not present and the cleaner who was present stated before the Mamlatdar on the same day that the owner Prakash Vyas-the present applicant asked them to transport the goods loaded in the tanker to the Ganga Rasayan Factory, G.I.D.C. Ankleshwar, for which he could not produce the purchase bill, invoice or delivery challan. It is only after 12 days on 17th July, 2002, the tanker driver in his written reply submitted to the Inspecting Officer has stated that he had fallen ill and therefore he left the tanker and went to his house without handing over the bill and other documents to the cleaner. In order to show that the transaction is genuine, the tanker driver then produced an invoice no.90 dated 24-6-2002 issued by Petro India Sales Corporation in favour of Ganga Rasayan P.Ltd. Ankleshwar. In pursuance to the submission of the invoice, the Inspecting Officer carried out further investigation at Petro India Sales Corporation, Gandhidham during which it was found on verification of stock register that 36 KL of white kerosene was sold under invoice no.00888 of Venus Chemtech, Valsad and invoice no.0089 of Gayatri Traders, Gondal. These two invoices were found to be got up ones and in fact invoice no.90 dated 24-6-2002 produced by the tanker driver was not at all issued and the Director of Ganga Rasayan had made a statement that they used to purchase kerosene from Reliance Industries. Even the Manager of Ganga Rasayan P.Ltd has specifically stated in his deposition that no order was placed by him with Petrol India Sales Corporation for purchase of white kerosene and that they were not using white kerosene since last three years and that he has no knowledge if the Calcutta office had placed any order. In light of this evidence, it does not lie in the mouth of the applicant to contend that the requisite documents were not supplied to the petitioner as thorough investigation was carried out by the competent authority and after collecting cogent and reliable evidence and affording sufficient opportunity of hearing at the confiscation proceedings, the confiscating authority had arrived at the satisfaction on objecive facts that the applicant has committed breach of the

provisions of Section 6A of the Essential Commodites Act, 1955 and the goods in question were meant to be disposed of in an unauthorised and illegal manner by black marketing. In that view of the matter, the authorities cited by the learned Counsel cannot be made applicable to the facts of the present case as in that case it was held that a mere look at the evidence shows that even giving full effect to the said evidence, it is impossible to reach a conclusion that the goods stored in the two godowns at P & R awaiting their transport to Bombay were meant to be sold within the Gujarat Market.

9. The learned Counsel has next submitted that every contravention is not required to be resulted in confiscation and that there must be satisfaction of the confiscating authority about violation of the control orders. It has also been submitted that the confiscating authority has not considered the aspect that the detention order dated 14-10-2002 passed under the Blackmarketing Act has been revoked by the Central Government. To lend support to his submission, the learned Counsel has placed reliance on the decision rendered in the case of N.NAGENDRA RAO & Co. v. STATE OF GUJARAT , reported in AIR 1984 SC 2663. However, having examined this authority, I find that it deals with a case of technical violations of discrepancy in stock or failure to put up the price list etc. whereas in the instant case, as already discussed hereinabove, the confiscating authority has arrived at a definite conclusion that the provisions of Section 6A of the Essential Commodities Act has been violated and the goods in question were meant to be disposed of in an illegal and unauthorised manner, and therefore, the authority cited has no relevance. Merely because the Central Government had revoked the detention order, that by itself is not sufficient to drawn an inference in favour of the applicant.

10. The learned Counsel next submitted that the authorities below have failed to appreciate that 100% confiscation of seized goods is very harsh punishment and that there was no persistent involvement in such illegal activities. The learned Counsel has placed reliance on the decision rendered in the case of (1) PATEL AMBARAM KUBERBHAI V. STATE OF GUJARAT AND OTHERS reported in 1998 (2) G.L.H.533, (2) LAXMI OIL MILLS & INDUSTRIES V. STATE OF GUJARAT AND ANOTHER reported in 1987 (2) G.L.H. (U.J.) 33. However, in the instant case there is allegation of black marketing and violation of control orders and hence no reduction in the percentage of confiscation can be permitted whereas in authorities

cited that was not so.

11. Learned Counsel has next submitted that the respondent no.2-authority had committed error in calculating the amount of stock and the value thereof put at Rs.1,92,000/- as also the value of the tanker at Rs.5,00,000/-. This contention of the learned Counsel cannot be accepted as the applicant has failed to remain present all throughout the confiscation proceedings though ample opportunity was granted. Had he remained present at the confiscation proceedings he could have demanded the materials on the basis of which the authority had arrived at the said figures. Moreover, there cannot be any hard and fast rule in calculating the value of the stock or value of the tanker as it all depends on the condition of the stock and the tanker.

12. Learned Counsel finally argued that the commodity seized is free sale white kerosene which was obtained under the parallel market system i.e. not covered under the public distribution system, and therefore, the provisions of Kerosene Control Order would not apply and as such the order of confiscation of stock of free sale white kerosene is without authority. It was for the applicant to raise such a contention before the trial Court and a bald statement to the effect that the goods seized is free sale white kerosene obtained under the parallel market system not supported by any documents cannot be looked into at this stage of revision.

13. The learned A.P.P.Mr. K.P.Raval on the other hand contended that the applicant has failed to produce the relevant bills at the time of inspection and despite notice was served to the applicant he had not chosen to remain present at the confiscation proceedings at the different dates fixed. According to the learned A.P.P., the Courts below have passed elaborate and well reasoned judgments which does not call for interference at the hands of this Court.

14. Thus having examined the matter from all angles, I could not lay my hands on any material which could point out any manifest error of law or that the findings reached by the Courts below are unreasonable and are such which reasonably cannot be arrived at in light of the evidence as discussed hereinabove. This Court in Revision is not expected to undertake in-depth and minute re-examination of the entire evidence and upset the concurrent findings of the two Courts below. Suffice, it to say that the learned Counsel for the applicant has

miserably failed to make out any case for my interference in this Revision Application.

In the result, there being no substance in this Revision Application, the same fails and is dismissed. Rule is discharged.

(M.D.Shah,J.)

stanley-mds.